

NOTICE

TO: Underground Storage Tank Owner/Operators, Certified UST Contracting Companies

DATE: September 1, 2005

SUBJECT: Status of the Underground Storage Tank Branch's Petroleum Storage Tank Environmental Assurance Fund and the Initiation of Additional Cleanup Actions

The purpose of this communication is to advise the regulated community as to the current and projected status of the Underground Storage Tank Branch and the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

General Financial Status of the PSTEAF

A required transfer of \$64 million to the state's general fund per the budget bill passed in 2005 by the state Legislature will occur at the close of fiscal year 2006, which runs from July 1, 2005 through June 30, 2006.

The state budget enacted by the legislature for fiscal year 2006 appropriated \$25 million in bond sale revenue to the PSTEAF for the purpose of claim payments.

For fiscal year 2006, expenditure of the \$25 million in appropriations is projected to be allocated as follows:

- \$10 million for "In-house" claims pending payment.
- \$9 million for new claim submittals averaging \$750,000 per month during the past fiscal year. Note that a majority of these claim submittals are associated with previously approved Corrective Action Plans and directive letters issued prior to September 2004.
- \$1.5 million is required by statute to be held in reserve to accommodate for financial assurance requirements and state-lead actions.
- \$1.5 million will be reserved for Emergency Response claims related to declared emergencies.
- \$1.5 million will be allocated for the Underground Storage Tank Branch's Re-sampling Initiative outlined below.

In addition to the allocations listed above, personnel and operational costs of the PSTEAF must be included. This projection indicates that there will be limited funding for the initiation of new

actions outside of the exceptions to the regulatory directive suspension. The currently existing ranking system will be utilized to identify facilities targeted for new directive letters based on available funding and regardless of Financial Responsibility Account (FRA) or Petroleum Storage Tank Account (PSTA) placement.

Status of Regulatory Amendments

The Division of Waste Management has completed a preliminary draft of amendments to the UST regulations that includes a pre-determined fixed cost approach to conducting additional evaluations/site investigations. With this approach, a reimbursable amount would be included in the USTB directive letter that will be a non-negotiable amount to be paid upon submittal of the required technical report and a determination of technical completeness by USTB staff. No claim submittal would be required.

It is expected that the amended regulations will be formally filed with the Legislative Research Commission in the near future. Note that the promulgation process to finalize the regulations normally takes six to eight months to complete.

Status of Regulatory Directive Letters

The suspension on regulatory directive letters remains in effect. Upon the receipt of claims for directive letters issued prior to September 2004, and the subsequent payment of those claims, a determination will be made as to the available funding remaining for the initiation of new directive letters. The limited exceptions to the suspension that have been in effect will be maintained.

An additional exception to the suspension has been implemented by the USTB. This exception applies to the re-sampling of facilities that have minor contamination and for which the latest analysis is more than one year old. This exception is limited to those facilities that have a potential to achieve “No Further Action” status through the re-sampling event.

Exceptions to this suspension are:

1. Directive letters issued in relation to situations determined by the USTB to be imminent threats to human health or the environment.
2. Directive letters issued in relation to pending property transfers where a copy of a current sales contract is provided to the USTB.
3. Directive letters issued for re-sampling.

All future directive letters will include a requirement that a cost estimate be provided for the actions required. This cost estimate will be reviewed by USTB staff and a “not to exceed” amount will be established in writing to the tank owner and certified contractor. This will apply to both pre-approval and non pre-approval facilities.

The establishment of a “not to exceed” amount will serve as the obligation of funds for the specified work required in a directive letter.

Claims may be submitted and work may proceed in response to a USTB directive letter issued after September 1, 2004 that did not include a “not to exceed” amount. These claims will

be reviewed in chronological order and eligible costs reimbursed on a first-in, first-out basis as funding allows. Obligations will be made to cover the reimbursable cost for these claims. Be aware that there could be a delay in reimbursement of several months.

Claims related to Directive Letters issued prior to September 1, 2004:

The USTB intends to rescind directive letters issued prior to September 1, 2004 due to the time that has passed. If work has been performed and costs incurred in response to a USTB directive letter issued prior to September 1, 2004, a technical report accompanied by a claim for those costs must be submitted to the USTB by December 1, 2005.

The only exception to this requirement is for those facilities that have received a “no further action” letter. Per KRS Chapter 224, these facilities have two years from the date of the “no further action” letter to submit a claim for reimbursement. It is requested, however, that these claims be submitted as soon as possible to allow for a timely determination of available funding for new directives.

The requirement for claim submittals by December 1, 2005 does not apply to imminent threat, property transfer, or re-sampling directive letters issued after September 1, 2004, as described in the “Status of Regulatory Directive Letters” section above or for SOTRA claims.

SOTRA Claims:

SOTRA claims may be submitted for payment processing without including a directive letter or “No Further Action” letter once all closure activities have been completed.

Corrective Action Plans:

Those sites in the corrective action phase of the program that have not submitted or implemented a corrective action plan are asked to refrain from such submittals or implementations until contacted by the USTB to initiate action.

Those facilities that have implemented an approved Corrective Action Plan are asked to supply information to the USTB regarding the current status of the remedial system (i.e., is the system operating or shut down?).

In addition, cost estimates should be provided for the continued operation of the remedial system, including costs for required soil and/or groundwater monitoring thru June 30, 2006.

Affidavits and Certificates of Eligibility:

Affidavit submittals will be reviewed and Certificates of Eligibility will be issued upon approval.

Applications for Assistance:

The approval of new Applications for Assistance will continue.

Annual Tank Fee Invoicing:

Annual tank fee invoicing will continue to be sent to all registered tank owners. Please note that “Certificates of Registration” will not be issued in response to payment of annual tank fee invoices. Instead, a receipt for payment will be issued and should be kept as proof of payment. The receipt may be used for the same purposes as the certificate.

If you have any questions regarding this notice, please contact the Underground Storage Tank Branch at (502) 564-5981 or 800 928-7782.

Underground Storage Tank Branch

62 Total Staff

8/16/05

